

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 149 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
- =====

G.S.R.T. CORPORATION

Versus

A. H. DABHI

Appearance:

MR HARDIK C RAWAL for Petitioner No. 1

MR SN SHELAT for Petitioner No. 1

MR JS BRAHMBHATT for Respondent No. 1

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 29/06/2001

ORAL JUDGEMENT

The petitioner, Gujarat State Road Transport Corporation has challenged the award dated 14th October,

1986 passed by the Labour Court Nadiad in Reference (LCA) No.1114 of 1983. The Labour Court has set aside the order of dismissal and directed reinstatement without backwages with a further direction as to stoppage of one increment. It is submitted on behalf of the petitioner that this award is bad in law, against the evidence on record and unwarranted of facts with special reference to the findings recorded by the Labour Court.

2. On behalf of the respondent, it was submitted that the explanation tendered by the delinquent workman has not been taken into consideration by the Labour Court. It was further submitted that even if the Court comes to the conclusion that the award of the Labour Court suffers from an infirmity, directions may be given to stop some further implementations, but the order of reinstatement should not be reversed.

3. The respondent workman was appointed as a Conductor with the petitioner Corporation and on 28th September, 1980 he was on duty on Ahmedabad to Palla route. That on the return trip from Palla to Ahmedabad on 29th September, 1980, the respondent workman issued two tickets to two passengers travelling from Palla to Matar. This fact came into light during the course of surprise checking enroute. After issuing show cause notice and carrying out necessary inquiry, the respondent was dismissed from service by the petitioner Corporation. The said dismissal was challenged and as stated the aforesaid order was made by the Labour Court.

4. The impugned award made by the Labour Court cannot be allowed to stand for the following reasons. The Labour Court has found as a matter of fact :

- (i) On perusal of the papers of departmental inquiry, it is found that the two tickets had been punched for the down trip once and were used for the up trip once again.
- (ii) The respondent workman has accepted that he had utilized the two punched tickets once again.
- (iii) Excess cash of Rs.6.90 was found with the respondent workman.
- (iv) The departmental inquiry conducted against the respondent workman was legal and valid and the charged framed against him were conclusively proved.

5. On the basis of aforesaid findings of fact, the Labour Court observed that the respondent workman was correctly held to be guilty of the charge that on 29th September, 1980, misconduct was committed of utilizing the same tickets and excess cash recovered from him and, therefore, the findings and conclusion of the authority was legal and valid.

6. However, for the purpose of reducing the sentence, the Labour Court has observed that though the default of the respondent workman stood proved and in past he had been fined for a similar default, the respondent workman should be granted one more opportunity. It is in this context that the impugned award has been made by the Labour Court; it goes on to

observe that the order of dismissal has not been made mala fide; it is then stated that sympathy should be shown towards the respondent workman and that is how the provision of Section 11A of the Industrial Disputes Act have been resorted to for making the order.

7. The provision of Section 11A of the Industrial Disputes Act have been interpreted and considered, time and again by this Court as well as the Apex Court and the approach in such matter is laid down thus :

(i) Gujarat State Road Transport Corporation Vs. Kachraji Motiji Parmar, 1993(1) G.L.R. 302.

"Under Sec.11A of the Industrial Disputes Act the Industrial Tribunal or the Labour Court is not having unguided power to set aside the justified order passed by the management. The power under Sec.11A has to be exercised judicially and the Industrial Tribunal or Labour Court can interfere with the decision of the Management under Sec.11A of the Act only when it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of guilt of the workman concerned. This Court has repeatedly held that misappropriation, if held established, would be a major misconduct and normally dismissal order passed by the competent authority should not be interfered with by the Labour Court or the Industrial Court under Sec.11A of the Industrial Disputes Act."

(ii) U.P. State Road Transport Corporation Vs. A.K. Parul, 1998 SCC (L&S) 1194.

" This Court consistently has taken the view that while exercising judicial review the courts shall not normally interfere with the punishment imposed by the authorities and this will be more so when the Court finds the charges were proved."

(iii) Janatha Bazar (South Karnara Central Co-operative Wholesale Stores Ltd.) Vs. Secretary, Sahakari Noukarara Sangh, AIR 2000 SC 3129.

"8. In case of proved misappropriation, in our view, there is no question of considering past record. It is the discretion of the employer to consider the same in appropriate cases, but the Labour Court cannot substitute the penalty imposed by the employer in such cases.

(iv) Karnataka State Road Transport Corporation Vs. B.S. Hullikatti, (2001)2 SCC 574.

"6. It is misplaced sympathy by the Labour Courts in such cases when on checking it is found that the Bus Conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged. It is the responsibility of the Bus Conductors to collect the correct fare from the passengers and deposit the same with the company. They act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare.

7. In our opinion, the order of

dismissal should not have been set aside,

."

8. In view of the aforesaid settled legal position, it is not possible for this Court to take any other view of the matter in light of the facts which have been recorded by the Labour Court after appreciation of evidence on record. On behalf of the respondent Mr. Brambhatt relied upon the decisions, one of Madhya Pradesh High Court (Indore Bench) and the other of this Court. However, both the aforesaid decisions rested on their own individual facts. Moreover, both the said decisions have been rendered by single judge and cannot be applied for the simple reason that the aforesaid decisions are Per Division Bench and by the Supreme Court.

9. In view of the aforesaid facts and circumstances of the case, this petition is allowed. The award dated 14th October, 1996 passed by the Labour Court, Nadiad is set aside and the order of the Competent Authority dated 19th May, 1981 is restored.

Rule made absolute with no order as to costs.

(D.A.Mehta, J)

'Bhavesh'